department for
education and skills
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Dear Colleague,

CONSULTATION ON THE APPLICATION OF THE BEST VALUE CODE OF PRACTICE ON WORKFORCE MATTERS IN LOCAL AUTHORITY SERVICE CONTRACTS TO MAINTAINED SCHOOLS

I am writing to you following Stephen Crowne's letter and accompanying consultation documents of 1 October.

A draft set of regulations is attached to this letter setting out how we intend to use powers under Schedule 1 to the Education Act 2002 to require governing bodies of all schools in the maintained sector to have regard to any relevant provisions of the Best Value Code of Practice on Workforce Matters in Local Authority Service Contracts (Best Value Code). This requirement would apply not only to governing bodies of foundation, foundation special and voluntary aided schools, which are the employers of their own staff, but also to the governing bodies of community, community special, voluntary controlled and maintained nursery schools.

The Best Value Code was introduced to provide that the principles of the Transfer of Undertaking (Protection of Employment) Regulations 1981 (TUPE) should be followed in relation to new staff recruited to work on a contract after the transfer event, with the effect that: (1) staff from the local authority will transfer to the employment of the contractor and that TUPE should apply, and that in circumstances where TUPE does not apply in strict legal terms, the principles of TUPE should be followed and the staff involved should be treated no less favourably than had the Regulations applied; and (2) that new staff recruited by the contractor to work on a local authority contract should be treated no less favourably than staff transferred from the local authority. This means that staff employed after the transfer should have terms and conditions that are at least equivalent to those of any existing staff who may have transferred under TUPE.

The attached draft regulations seek to extend the application of the Best Value Code to the governing bodies of maintained schools where this is relevant. This will afford all school support staff the same level of employment protection and minimum terms and conditions placing them in exactly the same position as local authority staff and

will ensure a uniform approach to the determination of terms and conditions for all employees of contractors who carry out work which has been contracted out by schools.

In practice this will mean that schools which are contracting out services under governing body contracts will need to ensure that their chosen service provider offers new recruits employment on fair and reasonable terms and conditions which are, overall, no less favourable than those of staff who transferred from the governing body. The service provider will also be required to offer reasonable pension arrangements.

The proposed regulations do not seek to alter the position of schools as employers of support staff or to fetter the provisions of the School Staffing Regulations (2003/1963). Indeed, foundation and voluntary aided schools would still be free to make decisions about the appointment of support staff and the pay and conditions of those staff.

A copy of the Best Value Code can be accessed at: http://www.odpm.gov.uk/stellent/groups/odpm_control/documents/contentservertemplate/odpm_index.hcst?n=4426&l=4. The Best Value Code also refers to the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector which is available from http://www.cabinet-office.gov.uk/civilservice/2000/tupe/.

We would welcome any comments on the draft regulations. Responses, and any questions about the consultation exercise, should be sent by e-mail to: BestValueWorkforce.CONSULTATION@dfes.gsi.gov.uk; or posted to David Duffett at Area 3C, Sanctuary Buildings, Great Smith Street, London, SW1P 3BT.

It would be helpful to have your comments by 12 January 2005. This allows over twelve weeks for responses in line with the Cabinet Office's Code of Practice on consultations.

If following the consultation these or similar regulations are introduced it is our intention to produce guidance and a set of frequently asked questions on GovernorNet and other relevant websites.

STEPHEN HILLIER

List of consultees

•	Agency for Jewish Education
•	Association of Muslim Schools (UK)
•	Association of Foundation and Voluntary Aided Schools (AFVAS)
•	Association of Teachers and Lecturers (ATL)
•	Board of Deputies of British Jews
•	Catholic Education Service and all Roman Catholic Dioceses
•	Church of England Board of Education and all Church of England Dioceses
•	Confederation of British Industry (CBI)
•	Churches Together in England
•	Confederation of Education and Children's Services Managers (CONFED)
•	Foundation and Aided Schools National Association (FASNA)
•	Greek Orthodox Church
•	GMB
•	General Teaching Council (GTC)
•	Local Government Employers' Organisation
•	British Humanist Association
•	Human Scale Education
•	Information for School and College Governors (ISCG)
•	All Local Education Authorities in England
•	Local Government Association (LGA)
•	Learning and Skills Council (National)
•	The Methodist Church
•	National Association of School Governors (NASG)
•	National Association of Head Teachers (NAHT)
•	National Secular Society
•	National Governors Council (NGC)
•	National Association of Schoolmaster Union of Women Teachers (NASUWT)
•	National Union of Teachers (NUT)
•	National Employers' Organisation for School Teachers (NEOST)
•	Office of Schools Adjudicator (OSA)
•	Professional Association of Teachers (PAT)
•	School Organisation Committees
•	Seventh-Day Adventist Church
•	Secondary Heads Association (SHA)
•	Network of Sikh Organisations
•	Quakers – Society of Friends
•	Specialist Schools Trust

•	Steiner Waldorf Fellowship
•	Transport and General Workers Union (TGWU)
•	Teacher Training Agency (TTA)
•	Trades Union Council
•	Unison
•	Youth Sport Trust